

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

KARL F. THOMPSON, JR.,
Defendant.

No. CR-09-88-FVS

ORDER RE THE "UNITED
STATES' MOTION FOR
RECONSIDERATION" AND THE
"DEFENDANT'S OBJECTION"

THIS MATTER comes before the Court without oral argument based upon both the "United States' Motion for Reconsideration" and "Defendant's Motion to Strike." The United States is represented by Timothy M. Durkin, Aine Ahmed, Joseph H. Harrington, and Victor Boutros. The defendant is represented by Carl J. Orekovich and Courtney A. Garcea.

BACKGROUND

On September 21, 2012, the Court set November 15th as the date for the defendant's sentencing. At the same time, the Court established a briefing schedule. The purpose of the schedule was to facilitate the orderly presentation of motions, objections and evidence. Responses were due on October 22nd. Replies were due on October 29th. On October 29th, the United States filed a memorandum.

1 Apparently, the United States intended to attach a number of exhibits
2 to it. For reasons that are not clear, the United States did not
3 attach the exhibits that were cited in the body of the memo. On
4 November 5th, the United States filed a memorandum that reiterated
5 objections and arguments it had made earlier. The United States
6 attached six exhibits. Three of the exhibits are declarations from
7 physicians. The defendant objected to the untimely disclosure of the
8 exhibits, especially the declarations, and moved to strike them. On
9 November 9th, the Court granted his motion. On November 12th and
10 November 13th, the United States filed the exhibits that were referred
11 to in the body of its memo of October 29th. On November 13th, the
12 United States moved for reconsideration of the Court's order of
13 November 9th, *i.e.*, the order striking untimely evidence. The same
14 day, the defendant again objected to the United States' untimely
15 submissions. Both the United States' reconsideration motion (ECF No.
16 1138) and the defendant's objection (ECF No. 1147) are ready for
17 resolution.
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21 **RULING**

22 This order concerns the admissibility of the declarations,
23 exhibits, and other evidentiary materials that were filed by the
24 United States on November 5th, 12th, and 13th. The Court will
25 consider information of which the defendant was aware on October 29th,
26

1 i.e., the deadline for filing replies. For example, the Court will
2 consider information that was disclosed to the defendant by the United
3 States prior to trial. Similarly, the Court will consider evidence
4 that was part of the record as of October 29th. This includes expert
5 opinions that were admitted at trial. By contrast, the Court will not
6 consider information that was first disclosed to the defendant after
7 October 29th. This includes expert opinions.
8

9 **IT IS HEREBY ORDERED:**

10 1. The "United States' Motion to Expedite" (**ECF No. 1139**) is
11 granted.
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13 2. The "United States' Motion for Reconsideration" (**ECF No. 1138**)
14 is granted in part and denied in part.

15 3. The "Defendant's Objection" (**ECF No. 1147**) is granted in part
16 and denied in part.
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18 **IT IS SO ORDERED.** The District Court Executive is hereby
19 directed to enter this order and furnish copies to counsel.

20 **DATED** this 14th day of November, 2012.

21
22 s/ Fred Van Sickle
Fred Van Sickle
23 Senior United States District Judge
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